

1 MCGREGOR W. SCOTT
United States Attorney
2 COURTNEY J. LINN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, CA 95814
4 Telephone: (916) 554-2700

5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 APPROXIMATELY \$1,200,000.00 IN
14 U.S. CURRENCY SEIZED FROM FIRST
15 CALIFORNIA BANK ACCT. NO.
2005638, ETC.,

16 Defendants.
17

CIV-S-05-0149 WBS KJM

STIPULATION AND ORDER STAYING
ACTION

18
19 It is hereby stipulated by and between plaintiff United States
20 of America and potential claimants Matthew Wallace Schachter a.k.a.
21 Robert Lewis Brown, John W. Hollis and Judith L. Hollis, by and
22 through their respective counsel, and the Provisional Liquidator of
23 Tri-Continental Exchange, as follows:

24 1. As yet, no party has filed a claim or answer, or otherwise
25 appeared in the action to contest the forfeiture. Nonetheless,
26 potential claimant John Hollis maintains that he has an interest in
27 the funds seized from his trust and personal accounts (\$1.2 million
28

1 from First California Bank, account number 2005638 and \$225,958.84
2 from Bank of America, account number 004653665607). According to
3 Hollis, approximately \$54,497.79 of these funds represent payment for
4 legal fees, costs, and expenses earned by Hollis and other legal
5 counsel for Tri-Continental Exchange and Matthew Wallace Schachter
6 a.k.a. Robert Lewis Brown prior to the seizure at issue. Without
7 conceding that Hollis has standing to claim any of the defendant
8 funds, the United States acknowledges that some of the defendant funds
9 were in fact seized from Hollis' personal and trust accounts.

10 2. Potential claimant Matthew Wallace Schachter a.k.a. Robert
11 Lewis Brown maintains that he is the owner of all of the funds at
12 issue in this case, and that he intends to file a claim to such funds.
13 Schachter is presently facing federal criminal charges in the Eastern
14 District of California, United States v. Matthew Wallace Schachter,
15 CR S-05-59 DFL, arising out of the same transactions and events which
16 form the bases for this civil forfeiture action. For purposes of this
17 application, the United States stipulates that Schachter has standing.
18 To assert a claim in this proceeding. See 18 U.S.C. §
19 981(g) (2) (B).¹

20 3. The government of St. Vincent and the Grenadines has
21 appointed a provisional liquidator for Tri-Continental Exchange. It
22 is not clear at this stage whether the provisional liquidator intends
23 to file a claim in this action. Nonetheless, the provisional
24

25
26 ¹ The United States previously filed a notice of related cases
27 pursuant to 83-123, alerting the Court that this action is related to
28 that criminal case. The Court has not determined if the two actions
are related within the meaning of the Local Rule.

1 liquidator stipulates to the stay of this action on the terms set
2 forth herein; provided that his agreement herein does not constitute
3 an appearance for the purpose of submitting to the jurisdiction in
4 this action and that his time to file a claim in this action is
5 extended until thirty days following the expiration of this
6 stipulation.

7 4. The parties to this stipulation recognize that proceeding
8 with this action at this time has potential adverse affects on the
9 prosecution of the related-criminal case and/or upon potential
10 claimant Schachter's right against self-incrimination in the
11 related federal criminal case. See 18 U.S.C. § 981(g).

12 5. The United States also seeks a stay for an independent
13 reason. Recently, the court of appeals decided a case, United
14 States v. \$4,224,958.57, 392 F.3d 1002 (9th Cir. 2004) ("Boylan"),
15 that calls into question whether in a case such as this, i.e., a
16 case in which the government seeks to forfeit the proceeds of an
17 alleged fraud scheme, the government can move for forfeiture
18 without recognizing the rights of the victims to come forward and
19 maintain claims in the forfeiture action itself. The Boylan
20 decision arguably requires the Court to convert the forfeiture
21 action into some sort of trust administration proceeding, and
22 "administer that trust, giving notice to all potential claimants
23 and taking steps to assure that no claimant obtains more than his
24 or her fair share." Id. at 1005. The Boylan Court did not explain
25 how this Court is to adjudicate the potential claims of Schachter
26 and others to the seized assets, and at the same time administer a
27
28

1 trust for potential victims - victims that in this case may number
2 into the hundreds and fall into different classes - much
3 less explain what the government's role, if any, would be in such a
4 proceeding.²

5 6. Counsel for the United States is advised that on March 22,
6 2005, the government filed a motion to stay the mandate in Boylan
7 pending a decision by the Solicitor General whether to petition for
8 certiorari to the Supreme Court.³ The court of appeals has yet
9 to rule on this motion, and the Solicitor General has yet to decide
10 whether to petition for certiorari. In view of this, and in view
11 of the dramatic effects the Boylan decision could have on the
12 manner in which this action is handled going forward, the
13 government cites these potential further proceedings in Boylan as
14 an additional justification for entering a stay.

15 THEREFORE the parties to this action stipulate as follows:

16 1. Pursuant to 18 U.S.C. § 981(g), and in the interests of
17 justice, this action shall be stayed pending the conclusion of the
18 federal criminal action presently pending against potential
19 claimant Schachter in the Eastern District of California, or upon
20

21 ² Prior to the Boylan decision the United States generally dealt
22 with the competing claims of large numbers of victims to forfeited
23 assets outside the judicial process. See 18 U.S.C. § 981(3)(6)
24 (authorizing the government to restore forfeited funds to the victim
25 of the offense giving rise to forfeiture; 28 C.F.R. § 9 (regulations
26 authorizing the Attorney General to use forfeited fund to benefit
27 victims); see also United States v. Wilcoxson, CR No. S-99-359 DFL
28 (E.D. Cal.) (a case in which pursuant to 28 C.F.R. § 9, the government
has thus far restored approximately \$6,000,000.00 in forfeited assets
to hundreds of victims of an investment fraud scheme).

³ The government previously filed two petition for rehearing and
rehearing en banc, both of which were denied by the court of appeals.

1 the expiration of six months from the date of this order, whichever
2 event shall occur first;

3 2. The Court may vacate the Status (pretrial scheduling)
4 Conference set for May 23, 2005, at 9:00 a.m.

5 3. The Provisional Liquidator of Tri-Continental Exchange's
6 execution of this stipulation does not submit him to the
7 jurisdiction of this Court and his time to file a claim in this
8 Action is extended until thirty days following the expiration of
9 this stipulation.

10 IT IS SO STIPULATED.

11 DATED: 5/9/05

McGREGOR W. SCOTT
United States Attorney

/s/ Courtney J. Linn

COURTNEY J. LINN
Assistant U.S. Attorney

17 Dated: 5/6/05

/s/ Matthew Bockmon
MATTHEW BOCKMON
Attorney for Potential Claimant
Matthew Wallace Schachter a.k.a.
Robert Lewis Brown

21 Dated: 5/9/05

/s/ Jean M. Hobler
MATTHEW G. JACOBS/JEAN M. HOBLER
Attorney for Potential Claimants
John W. Hollis and Judith L.

23 Hollis

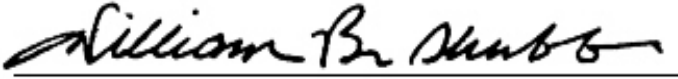
25 Dated: May 6 2005

/s/ Simon Whicker
SIMON WHICKER
For the Provisional
Liquidator of TCE

1 For good cause shown, the Court adopts the parties'
2 stipulation. Counsel for the United States shall cause this
3 matter to be placed on the court's calendar for Status
4 Conference within thirty days from conclusion of the federal
5 criminal action presently pending against potential claimant
6 Schachter in the Eastern District of California, or upon the
7 expiration of seven months from the date of this order,
8 whichever event shall occur first.

9 IT IS SO ORDERED.

10
11 DATED: May 10, 2005

12 
13 WILLIAM B. SHUBB
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28